IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 679 of 2007()

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CC.1118/2006 of JUDICIAL FIRST CLASS MAGISTRATE COURT, (MOBILE) KOTTAYAM

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PETITIONER: ACCUSED

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1. SEBASTIAN, S/O.JOSEPH,
   PEEDIYEKKAL HOUSE, PERUNNA, CHANGANASSERY,
   KOTTAYAM DISTRICT.

2. SARITHA ROSE SEBASTIAN, D/O.SEBASTIAN,
   PEEDIYEKKAL HOUSE, PERUNNA, CHANGANASSERY,
   KOTTAYAM DISTRICT.

BY ADV. SRI.P.K.ASHOKAN

RESPONDENTS: COMPLAINANT

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1. VARGHEESE, S/O.VARGHESE,
   KARIMATTATHIL HOUSE, KURISUMMOODU P.O.,
   CHANGANASSERY, KOTTAYAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/03/2007, ALONG WITH CRMC NO. 686 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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Crl.M.C.Nos. 679 & 686 of 2007

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Dated this the 20th day of March, 2007

**O R D E R**

The petitioners are father and daughter. They face indictment in two separate prosecutions, both launched by the first respondent/complainant, who is the brother-in-law of the first accused/father and the maternal uncle of the second accused/daughter. The cheques are for an amount of Rs. 7 Lakhs and for Rs.2,08,000/- respectively. Cognizance has been taken by the learned Magistrate. The petitioners have come to this Court with the prayer that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against them.

2. What are the reasons? The learned counsel for the petitioners submits that there actually was a transaction between the first petitioner and the complainant, evidenced by Annex.C agreement, under which admittedly there is a liability of Rs. 8 Lakhs for the first petitioner/accused and his wife to the complainant/brother-in-law. The liability to repay Rs. 8 lakhs is not disputed. The signatures of the petitioners in both the cheques are

also not disputed. The short contention that is raised is that the cheques were signed blank cheques handed over as security when Annex.C transaction was entered into. Annex.C does not make any reference to such cheques. It speaks of the liability to repay the amount of Rs. 8 lakhs within a period of two years from the date of execution of Annex.C.

3. The learned counsel for the petitioners contends that malafides is evident from the nature of the relationship between the parties, the nature of the recitals in Annex.C agreement, the nature of defence raised in the reply to the notice of demand as also from the nature of the vague denial of the averments in the reply notice in the complaints that have been filed. From these circumstances the learned counsel urges that the complaints are liable to be quashed. The learned counsel for the petitioners submits that the mere fact that the allegations about necessary ingredients are there in the complaints cannot be a fetter on the powers of this Court to invoke the jurisdiction under Section 482 Cr.P.C. if the petitioners are able to show that the complaints are on the face of it malafide and unjustified. The learned counsel for the petitioners relies on the decision in **C.B.I.** v. **Ravi Shankar Srivastava** ((2006) 7 SCC 188) in support of this proposition. There can be no quarrel with the proposition of law urged by the learned

counsel. The mere fact that the requisite averments are skilfully raised in the complaints is no reason for this Court not to invoke the powers under Section 482 Cr.P.C. if the court is convinced about malafides and oblique motives of the complainant.

4. But the crucial question is whether from the averments a safe conclusion about such malafide and vexatious nature of the proceedings can safely be drawn. If such a conclusion can be drawn, certainly powers under Section 482 Cr.P.C. can be invoked. But, if on the contrary the court feels that such contention can be resolved only by evidence to be adduced, certainly the matter has to be thrushed out at the stage of evidence and this Court will not be justified in invoking the powers under Section 482 Cr.P.C. I do not intend to express any final opinion on the disputed facts. Suffice it to say that from the facts and circumstances of this case I am satisfied that this case would fall in the latter category of cases, where the court expects the parties to substantiate their respective contentions before the learned Magistrate in the course of trial. The extra ordinary inherent jurisdiction under Section 482 Cr.P.C. does not, according to me, deserve to be invoked in the facts and circumstances of this case. The defence which the petitioners want to urge will have to be urged in the course of the trial and the learned Magistrate will have to take appropriate decision.

5. The learned counsel for the petitioners submits that insistence on personal appearance of the petitioners, who include a young unmarried woman i.e. the second accused, respectably employed, would work out great hardship and prejudice. I find no reason why the learned Magistrate, in a prosecution like the instant one, insist on personal presence of the accused. Necessary applications can be filed before the learned Magistrate for exemption and the learned Magistrate must pass appropriate orders on merits on such applications of both the accused.

6. These Crl.M.Cs. are dismissed, but with the above specific observations.

**(R. BASANT)**
Judge

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